

MATERIAL HARMFUL TO MINORS**AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Criminal Code regarding the offenses of distribution of pornographic material and material harmful to minors.

Highlighted Provisions:

This bill:

- ▶ provides the following penalties for minors that distribute pornographic material or deal in material harmful to a minor:
 - persons 16 or 17 years of age are guilty of a Class A misdemeanor; and
 - persons younger than 16 years of age are guilty of a Class B misdemeanor;
- ▶ provides that a person 18 years of age or older who solicits a person younger than 18 to distribute pornographic material or deal in material harmful to a minor is guilty of a third degree felony and is subject to specified penalties; and
- ▶ provides that if a person younger than 18 years of age has previously committed the offense of dealing in material harmful to minors, the person is guilty of a third degree felony for each subsequent offense.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-1204, as last amended by Laws of Utah 2007, Chapter 337

76-10-1206, as last amended by Laws of Utah 2008, Chapter 297

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-10-1204** is amended to read:

76-10-1204. Distributing pornographic material -- Penalties -- Exemptions for Internet service providers and hosting companies.

(1) A person is guilty of distributing pornographic material when ~~[he]~~ the person knowingly:

(a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others;

(b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others;

(c) distributes or offers to distribute, or exhibits or offers to exhibit, any pornographic material to others;

(d) writes, creates, or solicits the publication or advertising of pornographic material;

(e) promotes the distribution or exhibition of material ~~[he]~~ the person represents to be pornographic; or

(f) presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic.

(2) Each distributing of pornographic material as defined in Subsection (1) is a separate offense.

(3) It is a separate offense under this section for:

(a) each day's exhibition of any pornographic motion picture film; and

(b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.

(4) (a) An offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) An offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.

63 (c) An offense under this section committed by a person younger than 16 years of age
64 is a class B misdemeanor.

65 (b) [~~This~~] Subsection (4)(a) supersedes Section 77-18-1.

66 (5) A person 18 years of age or older who knowingly solicits, requests, commands,
67 encourages, or intentionally aids another person younger than 18 years of age to engage in
68 conduct prohibited under Subsections (1), (2), or (3) is guilty of a third degree felony and is
69 subject to the penalties under Subsection (4)(a).

70 ~~[(5)]~~ (6) (a) This section does not apply to an Internet service provider, as defined in
71 Section 76-10-1230, if:

72 (i) the distribution of pornographic material by the Internet service provider occurs
73 only incidentally through the Internet service provider's function of:

74 (A) transmitting or routing data from one person to another person; or

75 (B) providing a connection between one person and another person;

76 (ii) the Internet service provider does not intentionally aid or abet in the distribution of
77 the pornographic material; and

78 (iii) the Internet service provider does not knowingly receive funds from or through a
79 person who distributes the pornographic material in exchange for permitting the person to
80 distribute the pornographic material.

81 (b) This section does not apply to a hosting company, as defined in Section
82 76-10-1230, if:

83 (i) the distribution of pornographic material by the hosting company occurs only
84 incidentally through the hosting company's function of providing data storage space or data
85 caching to a person;

86 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
87 of the pornographic material; and

88 (iii) the hosting company does not knowingly receive funds from or through a person
89 who distributes the pornographic material in exchange for permitting the person to distribute,
90 store, or cache the pornographic material.

91 Section 2. Section **76-10-1206** is amended to read:

92 **76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for**
93 **Internet service providers and hosting companies.**

(1) A person is guilty of dealing in material harmful to minors when, knowing or believing that a person is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:

(a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or a person the actor believes to be a minor, any material harmful to minors;

(b) produces, performs, or directs any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors; or

(c) participates in any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors.

(2) (a) Each separate offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

(b) Each separate offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.

(c) Each separate offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.

~~(b)~~ (d) ~~[This section]~~ Subsection (2)(a) supersedes Section 77-18-1.

(3) (a) If a defendant 18 years of age or older has ~~[already]~~ been previously convicted ~~[once]~~ or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate ~~[further]~~ subsequent offense is a second degree felony punishable by:

(i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than one year.

(b) If a defendant younger than 18 years of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a third degree felony.

~~(b)~~ (c) ~~[This section]~~ Subsection (3)(a) supersedes Section 77-18-1.

~~(c)~~ (d) (i) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, a provider of an electronic communications service as defined in 18

125 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as
126 defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C.
127 Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

128 (A) the distribution of pornographic material by the Internet service provider occurs
129 only incidentally through the provider's function of:

130 (I) transmitting or routing data from one person to another person; or

131 (II) providing a connection between one person and another person;

132 (B) the provider does not intentionally aid or abet in the distribution of the
133 pornographic material; and

134 (C) the provider does not knowingly receive from or through a person who distributes
135 the pornographic material a fee greater than the fee generally charged by the provider, as a
136 specific condition for permitting the person to distribute the pornographic material.

137 (ii) This section does not apply to a hosting company, as defined in Section
138 76-10-1230, if:

139 (A) the distribution of pornographic material by the hosting company occurs only
140 incidentally through the hosting company's function of providing data storage space or data
141 caching to a person;

142 (B) the hosting company does not intentionally engage, aid, or abet in the distribution
143 of the pornographic material; and

144 (C) the hosting company does not knowingly receive from or through a person who
145 distributes the pornographic material a fee greater than the fee generally charged by the
146 provider, as a specific condition for permitting the person to distribute, store, or cache the
147 pornographic material.

148 (4) A service provider, as defined in Section 76-10-1230, is not negligent under this
149 section if it complies with Section 76-10-1231.

150 (5) A person 18 years of age or older who knowingly solicits, requests, commands,
151 encourages, or intentionally aids another person younger than 18 years of age to engage in
152 conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the
153 penalties under Subsection (2)(a).

Legislative Review Note
as of 6-24-08 11:16 AM

Office of Legislative Research and General Counsel